

Calendar No. 121

103D CONGRESS
1ST SESSION

S. 568

[Report No. 103-80]

A BILL

To strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes.

JUNE 29 (legislative day, JUNE 22), 1993

Reported with an amendment

SECTION 1. This Act may be cited as the
“Telemarketing and Consumer Fraud and Abuse Preven-
tion Act”.

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) “attorney general” means the chief legal officer of a State;

(2) “Commission” means the Federal Trade Commission;

(3) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States;

(4) “telemarketing” means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which has involved interstate telephone calls; the term does not include other use of a telephone in connection with business or personal transactions, nor does the term include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description or illustration of the goods or services offered for sale;

(B) includes the business address of the seller;

(C) includes multiple pages of written material or illustrations;

1 ~~(D)~~ is issued not less frequently than once
2 a year; and

3 ~~(E)~~ is at least the third catalog satisfying
4 the requirements of subparagraphs ~~(A)~~ through
5 ~~(D)~~ that has been issued by the seller within
6 the last five years;

7 where the seller does not place calls to customers
8 but only receives calls initiated by customers in re-
9 sponse to the catalog and during those calls takes
10 orders only without further solicitation; and

11 (5) “credit card laundering” means—

12 ~~(A)~~ the act or practice by a person en-
13 gaged in telemarketing (other than an act or
14 practice permitted in a valid agreement with a
15 member of a credit card system or the mem-
16 ber’s agent) of transferring to another person
17 to be presented to a member of a credit card
18 system or the member’s agent, for payment, one
19 or more evidences or records of transactions in-
20 volving goods or services offered by
21 telemarketing and paid for by credit card;

22 ~~(B)~~ the act or practice by a person acting
23 on behalf of a person engaged in telemarketing
24 (other than an act or practice permitted in a
25 valid agreement with a member of a credit card

1 system or the member's agent) of causing or ar-
2 ranging for a third person to present to a mem-
3 ber of a credit card system or the member's
4 agent, for payment, one or more evidences or
5 records of transactions involving goods or serv-
6 ices offered by telemarketing and paid for by
7 credit card;

8 (C) the act or practice by a person (other
9 than an act or practice permitted in a valid
10 agreement with a member of a credit card sys-
11 tem or the member's agent) of knowingly pre-
12 senting to a member of a credit card system or
13 the member's agent, for payment, one or more
14 evidences or records received from another per-
15 son of transactions involving goods or services
16 offered by telemarketing and paid for by credit
17 card; or

18 (D) such other acts or practices defined in
19 the rules of the Commission as credit card laun-
20 dering.

21 TELEMARKETING RULES

22 SEC. 3. (a) RULES ON TELEMARKETING ACTIVI-
23 TIES.—The Commission shall prescribe rules regarding
24 telemarketing activities. In prescribing such rules, the
25 Commission shall consider the inclusion of—

1 (1) a requirement that goods or services offered
2 by telemarketing be shipped or provided within a
3 specified period and that if the goods or services are
4 not shipped or provided within such period a refund
5 be required;

6 (2) where practicable, authority for a person
7 who orders a good or service through telemarketing
8 to cancel the order within a specified period;

9 (3) restrictions on the hours of the day when
10 unsolicited telephone calls can be made to consum-
11 ers;

12 (4) a prohibition of telemarketing generated by
13 computers on equipment that does not permit the in-
14 dividual called to terminate the telephone call; and

15 (5) recordkeeping requirements.

16 (b) PROHIBITION OF FRAUDULENT TELEMARKETING
17 ACTS OR PRACTICES.—The Commission also shall pre-
18 scribe rules prohibiting fraudulent telemarketing acts or
19 practices and shall include in such rules a definition of
20 the term “fraudulent telemarketing acts or practices”,
21 which may include activities of entities or individuals that
22 assist or facilitate fraudulent telemarketing. Credit card
23 laundering shall be a fraudulent telemarketing act or prac-
24 tice.

1 (c) DEADLINE; ADMINISTRATIVE PROCEDURE.—The
 2 Commission shall prescribe the rules under subsections (a)
 3 and (b) of this section within 180 days after the date of
 4 enactment of this Act. Such rules shall be prescribed in
 5 accordance with section 553 of title 5, United States Code.

6 (d) TREATMENT OF RULE VIOLATIONS.—Any viola-
 7 tion of any rule prescribed under subsection (a) or (b) of
 8 this section shall be treated as a violation of a trade regu-
 9 lation rule promulgated under section 18 of the Federal
 10 Trade Commission Act (15 U.S.C. 57a) regarding unfair
 11 or deceptive acts or practices (subject to any remedy or
 12 penalty applicable to any violation thereof).

13 (e) EFFECT OF STATE LAW.—The rules promulgated
 14 under this section shall not be construed as preempting
 15 State law.

16 ACTIONS BY STATE ATTORNEYS GENERAL

17 SEC. 4. (a) AUTHORITY OF STATES.—Whenever the
 18 attorney general of any State has reason to believe that
 19 the interests of the residents of that State have been or
 20 are being threatened or adversely affected because any
 21 person has engaged or is engaging in a pattern or practice
 22 of telemarketing which violates any rule, regulation, or
 23 order of the Commission under this Act, the State may
 24 bring a civil action on behalf of its residents to enjoin such
 25 telemarketing, to enforce compliance with any rule, regula-
 26 tion, or order of the Commission under this Act, to obtain

1 damages on behalf of their residents, or to obtain such
2 further and other relief as the court may deem appropriate.
3

4 (b) COURT JURISDICTION.—The district courts of the
5 United States, the United States courts of any territory,
6 and the District Court of the United States for the District
7 of Columbia shall have exclusive jurisdiction over all
8 civil actions brought under this section to enforce any liability
9 or duty created by any rule, regulation, or order
10 of the Commission under this Act, or to obtain damages
11 or other relief with respect thereto. Upon proper application,
12 such courts shall also have jurisdiction to issue writs
13 of mandamus, or orders affording like relief, commanding
14 the defendant to comply with the provisions of any rule,
15 regulation, or order of the Commission under this Act, including
16 the requirements that the defendant take such action
17 as is necessary to remove the danger of violation of
18 any such rule, regulation, or order. Upon a proper showing,
19 a permanent or temporary injunction or restraining
20 order shall be granted without bond.

21 (c) RIGHTS OF COMMISSION.—The State shall serve
22 prior written notice of any such civil action upon the Commission
23 and provide the Commission with a copy of its
24 complaint, except in any case where such prior notice is
25 not feasible, in which case the State shall serve such notice

1 immediately upon instituting such action. The Commis-
2 sion shall have the right (1) to intervene in the action,
3 (2) upon so intervening, to be heard on all matters arising
4 therein, and (3) to file petitions for appeal.

5 (d) VENUE; SERVICE OF PROCESS.—Any civil action
6 brought under this section in a district court of the United
7 States may be brought in the district wherein the defend-
8 ant is found or is an inhabitant or transacts business or
9 wherever venue is proper under section 1391 of title 28,
10 United States Code, and process in such cases may be
11 served in any district in which the defendant is an inhab-
12 itant or wherever the defendant may be found.

13 (e) EFFECT ON STATE POWERS OF ATTORNEYS
14 GENERAL.—For purposes of bringing any civil action
15 under this section, nothing in this Act shall prevent the
16 attorney general from exercising the powers conferred on
17 the attorney general by the laws of such State to conduct
18 investigations or to administer oaths or affirmations or to
19 compel the attendance of witnesses or the production of
20 documentary and other evidence.

21 (f) EFFECT ON ACTIONS UNDER STATE STATUTE.—
22 Nothing contained in this section shall prohibit an author-
23 ized State official from proceeding in State court on the
24 basis of an alleged violation of any general civil or criminal
25 statute of such State.

1 ~~(g) CIVIL ACTION BY COMMISSION.~~—Whenever the
 2 Commission has instituted a civil action for violation of
 3 any rule prescribed under this Act, no State may, during
 4 the pendency of such action instituted by the Commission,
 5 subsequently institute a civil action against any defendant
 6 named in the Commission’s complaint for violation of any
 7 rule as alleged in the Commission’s complaint.

8 ACTIONS BROUGHT BY PRIVATE PERSONS

9 ~~SEC. 5. (a) DEFINITION.~~—As used in this section, the
 10 term “person adversely affected by telemarketing”
 11 means—

12 (1) any person who has incurred loss or damage
 13 in connection with telemarketing and who actually
 14 purchased goods or services through telemarketing,
 15 or paid or is obligated to pay for goods or services
 16 purchased through telemarketing;

17 (2) any financial institution that has incurred
 18 loss or damage in connection with telemarketing; or

19 (3) any member organization comprised of fi-
 20 nancial institution members, or any parent organiza-
 21 tion of such member organization, if one or more of
 22 the financial institution members is eligible to bring
 23 a civil action under this subsection.

24 Such term does not include a governmental entity.

25 ~~(b) PRIVATE RIGHT OF ACTION.~~—(1) Any person ad-
 26 versely affected by any pattern or practice of

1 telemarketing which violates any rule, regulation, or order
2 of the Commission under this Act may, within three years
3 after discovery of the violation, bring a civil action against
4 a person who has engaged or is engaging in such pattern
5 or practice of telemarketing if the amount in controversy
6 exceeds the sum or value of \$50,000 in actual damages
7 for each person adversely affected by such telemarketing.
8 Such an action may be brought to enjoin such
9 telemarketing, to enforce compliance with any rule, regula-
10 tion, or order of the Commission under this Act, to obtain
11 damages, or to obtain such further and other relief as the
12 court may deem appropriate.

13 (2) The district courts of the United States, the Unit-
14 ed States courts of any territory, and the District Court
15 of the United States for the District of Columbia shall
16 have exclusive jurisdiction over all civil actions brought
17 under this section to enforce any liability or duty created
18 by any rule, regulation, or order of the Commission under
19 this Act, or to obtain damages or other relief with respect
20 thereto. Upon proper application, such courts shall also
21 have jurisdiction to issue writs of mandamus, or orders
22 affording like relief, commanding the defendant to comply
23 with the provisions of any rule, regulation, or order of the
24 Commission under this Act, including the requirement
25 that the defendant take such action as is necessary to re-

1 move the danger of violation or of any such rule, regula-
2 tion, or order. Upon a proper showing, a permanent or
3 temporary injunction or restraining order shall be granted
4 without bond.

5 (3) The plaintiff shall serve prior written notice of
6 the action upon the Commission and provide the Commis-
7 sion with a copy of its complaint, except in any case where
8 such prior notice is not feasible, in which case the person
9 shall serve such notice immediately upon instituting such
10 action. The Commission shall have the right (A) to inter-
11 vene in the action, (B) upon so intervening, to be heard
12 on all matters arising therein, and (C) to file petitions for
13 appeal.

14 (4) Whenever the Commission has instituted a civil
15 action for violation of any rule prescribed under this Act,
16 no person may, during the pendency of such action insti-
17 tuted by the Commission, subsequently institute a civil ac-
18 tion against any defendant named in the Commission's
19 complaint for violation of any rule as alleged in the Com-
20 mission's complaint.

21 (5) Any civil action brought under this section in a
22 district court of the United States may be brought in the
23 district wherein the defendant is found or is an inhabitant
24 or transacts business or wherever venue is proper under
25 section 1391 of title 28, United States Code, and process

1 in such cases may be served in any district in which the
 2 defendant is an inhabitant or wherever the defendant may
 3 be found.

4 (c) AWARD OF COSTS AND FEES.—The court, in is-
 5 suing any final order in any action brought under sub-
 6 section (b), may award costs of suit and reasonable fees
 7 for attorneys and expert witnesses to the prevailing party.

8 (d) RIGHTS UNDER STATUTE OR COMMON LAW.—
 9 Nothing in this section shall restrict any right which any
 10 person may have under any statute or common law.

11 VENUE

12 SEC. 6. Subsections (a) and (b) of section 13 of the
 13 Federal Trade Commission Act (15 U.S.C. 53) are each
 14 amended by adding at the end thereof the following:
 15 “Whenever it appears to the court that the interests of
 16 justice require that any other person, partnership, or cor-
 17 poration should be a party in such suit, the court may
 18 cause such person, partnership, or corporation to be sum-
 19 moned without regard to whether they reside or transact
 20 business in the district in which the suit is brought, and
 21 to that end process may be served wherever the person,
 22 partnership, or corporation may be found.”.

23 SUBPOENA

24 SEC. 7. (a) PHYSICAL EVIDENCE DEFINED.—Section
 25 20(a) of the Federal Trade Commission Act (15 U.S.C.
 26 57b–1(a)) is amended—

1 (1) by redesignating paragraph (7) as para-
2 graph (8); and

3 (2) by inserting immediately after paragraph
4 (6) the following new paragraph:

5 “(7) The term ‘physical evidence’ means any
6 object or device.”.

7 (b) ISSUANCE OF DEMAND.—Section 20(c)(1) of the
8 Federal Trade Commission Act (15 U.S.C. 57b–1(c)(1))
9 is amended—

10 (1) by inserting “physical evidence or” imme-
11 diately after “any” the second time it appears;

12 (2) by inserting “to produce such physical evi-
13 dence for inspection,” immediately before “to
14 produce”;

15 (3) by inserting “physical evidence,” imme-
16 diately after “concerning”; and

17 (4) by inserting “evidence,” immediately before
18 “material, answers.”.

19 (c) CONTENTS OF DEMAND.—Section 20(c)(3) of
20 the Federal Trade Commission Act (15 U.S.C. 57b–
21 1(c)(3)) is amended—

22 (1) by inserting “physical evidence or” imme-
23 diately before “documentary material”;

24 (2) in subparagraph (A)—

1 (A) by inserting “physical evidence or” im-
 2 mediately before “documentary”; and

3 (B) by inserting “evidence or” immediately
 4 after “permit such”;

5 (3) in subparagraph (B), by inserting “evidence
 6 or” immediately before “material”; and

7 (4) in subparagraph (C), by inserting “evidence
 8 or” immediately before “material”.

9 (d) ~~PRODUCTION OF EVIDENCE IN RESPONSE TO~~
 10 ~~DEMAND.~~—Section 20(c)(10) of the Federal Trade Com-
 11 mission Act (15 U.S.C. 57b–1(c)(10)) is amended by in-
 12 serting “physical evidence or” immediately before “docu-
 13 mentary material” each place it appears.

14 FALSE ADVERTISEMENTS CONCERNING SERVICES

15 ~~SEC. 8.~~ Section 12(a) of the Federal Trade Commis-
 16 sion Act (15 U.S.C. 52(a)) is amended by inserting “serv-
 17 ices,” immediately after “devices,” each place it appears.

18 CLEARINGHOUSE

19 ~~SEC. 9.~~ The Commission shall establish a clearing-
 20 house for inquiries made to Federal agencies concerning
 21 telemarketing. The clearinghouse will provide information
 22 (other than information which may not be disclosed under
 23 section 522(b) of title 5, United States Code, or under
 24 regulations prescribed by the Commission to implement
 25 section 552(b) of title 5, United States Code) to anyone
 26 making inquiries respecting persons engaged in

1 telemarketing or direct such inquiries to the appropriate
2 Federal or State agency.

3 FINANCIAL DATA

4 ~~SEC. 10.~~ Section 1109(a)(3) of the Right to Financial
5 Privacy Act of 1978 (12 U.S.C. 3409(a)(3)) is amended—

6 (1) by redesignating subparagraph (E) as sub-
7 paragraph (F);

8 (2) by striking “or” at the end of subparagraph
9 (D); and

10 (3) by inserting immediately after subpara-
11 graph (D) the following new subparagraph:

12 “(E) dissipation, removal, or destruction of
13 assets that are subject to forfeiture, seizure, re-
14 dress, or restitution under any law of the Unit-
15 ed States by reason of having been obtained in
16 violation of law; or”.

17 CRIMINAL CONTEMPT AUTHORITY

18 ~~SEC. 11.~~ Section 16(a)(1) of the Federal Trade Com-
19 mission Act (15 U.S.C. 56(a)(1)) is amended—

20 (1) in subparagraph (A) by striking “civil” the
21 first place it appears and inserting in lieu thereof
22 “Federal court”; and

23 (2) by adding at the end the following: “The
24 Commission may bring a criminal contempt action
25 for violations of orders obtained in cases brought
26 under section 13(b) of this Act in the same manner

1 as civil penalty and other Federal court actions to
2 which this subsection applies. Such cases may be ini-
3 tiated by the Commission on its own complaint, or
4 pursuant to its acceptance of an appointment by a
5 court to assist it in enforcing such orders pursuant
6 to Rule 42(b) of the Federal Rules of Criminal Pro-
7 cedure.”.

8 ADMINISTRATION AND APPLICABILITY OF ACT

9 SEC. 12. (a) ENFORCEMENT.—Except as otherwise
10 provided in sections 4 and 5 of this Act, this Act shall
11 be enforced by the Commission under the Federal Trade
12 Commission Act (15 U.S.C. 41 et seq.).

13 (b) APPLICABILITY OF FTCA.—The Commission
14 shall prevent any person from violating a rule, regulation,
15 or order of the Commission under this Act in the same
16 manner, by the same means, and with the same jurisdic-
17 tion, powers, and duties as though all applicable terms and
18 provisions of the Federal Trade Commission Act (15
19 U.S.C. 41 et seq.) were incorporated into and made a part
20 of this Act. Any person who violates such a rule, regula-
21 tion, or order shall be subject to the penalties and entitled
22 to the privileges and immunities provided in the Federal
23 Trade Commission Act in the same manner, by the same
24 means, and with the same jurisdiction, powers, and duties
25 as though all applicable terms and provisions of the Fed-

1 eral Trade Commission Act were incorporated into and
 2 made a part of this Act.

3 ~~(c) EXEMPTION.—(1) No provision of this Act shall~~
 4 ~~apply to any person exempt from the jurisdiction of the~~
 5 ~~Commission under section 5(a)(2) of the Federal Trade~~
 6 ~~Commission Act (15 U.S.C. 45(a)(2)), and nothing in this~~
 7 ~~Act shall be construed to vest the Commission, or the at-~~
 8 ~~torney general of any State or any person, with jurisdic-~~
 9 ~~tion or authority over any person not otherwise subject~~
 10 ~~to the jurisdiction or authority of the Commission.~~

11 ~~(2)(A) No provision of this Act shall apply—~~

12 ~~(i) to a broker, dealer, municipal securities~~
 13 ~~dealer, government securities broker, government se-~~
 14 ~~curities dealer, or investment company in connection~~
 15 ~~with the offer, sale, or purchase of any security, or~~
 16 ~~to an issuer in connection with the offer, sale, or~~
 17 ~~purchase of any security which that issuer has is-~~
 18 ~~sued, or to any investment adviser providing invest-~~
 19 ~~ment advice relating to any security; or~~

20 ~~(ii) to the solicitation, acceptance, confirmation,~~
 21 ~~or execution of orders for the entry into, purchase~~
 22 ~~of, or sale of any contract, account, agreement, or~~
 23 ~~transaction subject to the exclusive jurisdiction of~~
 24 ~~the Commodity Futures Trading Commission under~~
 25 ~~the Commodity Exchange Act (7 U.S.C. 1 et seq.)~~

1 by a person registered under the Commodity Ex-
2 change Act in order to engage in such activity, in-
3 cluding as a futures commission merchant, introduc-
4 ing broker, commodity trading adviser, commodity
5 pool operator, leverage transaction merchant, floor
6 broker, or floor trader, or as a person associated
7 with any such person.

8 (B) For purposes of subparagraph (A)(i)—

9 (1) the terms “broker”, “dealer”, “municipal
10 securities dealer”, “government securities broker”,
11 and “government securities dealer” have the mean-
12 ings given them in section 3(a) (4), (5), (30), (43),
13 and (44), respectively, of the Securities Exchange
14 Act of 1934 (15 U.S.C. 78c(a) (4), (5), (30), (43),
15 and (44));

16 (2) the term “investment adviser” has the
17 meaning given it in section 202(a)(11) of the Invest-
18 ment Advisers Act of 1940 (15 U.S.C. 80b-
19 2(a)(11));

20 (3) the term “investment company” has the
21 meaning given it in section 3(a) of the Investment
22 Company Act of 1940 (15 U.S.C. 80a-3(a));

23 (4) the term “issuer” has the meaning given it
24 in section 2(4) of the Securities Act of 1933 (15
25 U.S.C. 77b(4)); and

1 (5) the term “security” has the meaning given
 2 to it in section 2(1) of the Securities Act of 1933
 3 (15 U.S.C. 77b(1)); section 3(a)(10) of the Securi-
 4 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(10));
 5 and section 2(a)(36) of the Investment Company Act
 6 of 1940 (15 U.S.C. 80a-2(a)(36)).

7 LIFE CARE HOME STUDY

8 SEC. 13. (a) STUDY.—The Federal Trade Commis-
 9 sion shall conduct a study of unfair or deceptive acts or
 10 practices in the life care home industry, including acts or
 11 practices engaged in by life care homes. Within twenty-
 12 four months after the date of enactment of this Act, the
 13 Commission shall report the findings and conclusions of
 14 the study to Congress. The Commission shall indicate in
 15 its report whether it intends to initiate a trade regulation
 16 rulemaking under section 18 of the Federal Trade Com-
 17 mission Act (15 U.S.C. 57a) respecting unfair or deceptive
 18 acts or practices in the life care home industry and the
 19 reasons for such determination.

20 (b) DEFINITIONS.—For purposes of subsection (a),
 21 the term—

22 (1) “life care home” includes the facility or fa-
 23 cilities occupied, or planned to be occupied, by resi-
 24 dents or prospective residents where a provider un-
 25 dertakes to provide living accommodations and serv-
 26 ices pursuant to a life care contract, regardless of

1 whether such facilities are operated on a profit or
 2 nonprofit basis; and

3 ~~(2) “life care contract” includes a contract be-~~
 4 ~~tween a resident and a provider to provide the resi-~~
 5 ~~dent, for the duration of such resident’s life, living~~
 6 ~~accommodations and related services in a life care~~
 7 ~~home, including nursing care services, medical serv-~~
 8 ~~ices, and other health-related services, which is con-~~
 9 ~~ditioned upon the transfer of an entrance fee to the~~
 10 ~~provider and which may be further conditioned upon~~
 11 ~~the payment of periodic service fees.~~

12 SUNSET

13 ~~SEC. 14. The provisions of section 3, 4, and 5 shall~~
 14 ~~cease to have force an effect on and after the date that~~
 15 ~~is five years following the date of enactment of this Act.~~

16 SHORT TITLE

17 *SECTION 1. This Act may be cited as the*
 18 *“Telemarketing and Consumer Fraud and Abuse Preven-*
 19 *tion Act”.*

20 DEFINITIONS

21 *SEC. 2. As used in this Act, the term—*

22 *(1) “attorney general” means the chief legal offi-*
 23 *cer of a State;*

24 *(2) “Commission” means the Federal Trade*
 25 *Commission;*

1 (3) “State” means any State of the United
2 States, the District of Columbia, Puerto Rico, the
3 Northern Mariana Islands, and any territory or pos-
4 session of the United States;

5 (4) “telemarketing” means a plan, program, or
6 campaign which is conducted to induce purchases of
7 goods or services by significant use of one or more
8 telephones and which has involved interstate telephone
9 calls; the term does not include other use of a tele-
10 phone in connection with business or personal trans-
11 actions, nor does the term include the solicitation of
12 sales through the mailing of a catalog which—

13 (A) contains a written description or illus-
14 tration of the goods or services offered for sale;

15 (B) includes the business address of the sell-
16 er;

17 (C) includes multiple pages of written mate-
18 rial or illustrations;

19 (D) is issued not less frequently than once
20 a year; and

21 (E) is at least the third catalog satisfying
22 the requirements of subparagraphs (A) through
23 (D) that has been issued by the seller within the
24 last 5 years,

1 *where the seller does not place calls to customers but*
2 *only receives calls initiated by customers in response*
3 *to the catalog and during those calls takes orders only*
4 *without further solicitation; and*

5 (5) “credit card laundering” means—

6 (A) *the act or practice by a person engaged*
7 *in telemarketing (other than an act or practice*
8 *permitted in a valid agreement with a member*
9 *of a credit card system or the member’s agent)*
10 *of transferring to another person to be presented*
11 *to a member of a credit card system or the mem-*
12 *ber’s agent, for payment, one or more evidences*
13 *or records of transactions involving goods or*
14 *services offered by telemarketing and paid for by*
15 *credit card;*

16 (B) *the act or practice by a person acting*
17 *on behalf of a person engaged in telemarketing*
18 *(other than an act or practice permitted in a*
19 *valid agreement with a member of a credit card*
20 *system or the member’s agent) of causing or ar-*
21 *ranging for a third person to present to a mem-*
22 *ber of a credit card system or the member’s*
23 *agent, for payment, one or more evidences or*
24 *records of transactions involving goods or serv-*

1 *ices offered by telemarketing and paid for by*
 2 *credit card;*

3 *(C) the act or practice by a person (other*
 4 *than an act or practice permitted in a valid*
 5 *agreement with a member of a credit card system*
 6 *or the member's agent) of knowingly presenting*
 7 *to a member of a credit card system or the mem-*
 8 *ber's agent, for payment, one or more evidences*
 9 *or records received from another person of trans-*
 10 *actions involving goods or services offered by*
 11 *telemarketing and paid for by credit card; or*

12 *(D) such other acts or practices defined in*
 13 *the rules of the Commission as credit card laun-*
 14 *dering.*

15 *TELEMARKETING RULES*

16 *SEC. 3. (a) RULES ON TELEMARKETING ACTIVITIES.—*
 17 *The Commission shall prescribe rules regarding*
 18 *telemarketing activities. In prescribing such rules, the Com-*
 19 *mission shall consider the inclusion of—*

20 *(1) a requirement that goods or services offered*
 21 *by telemarketing be shipped or provided within a*
 22 *specified period and that if the goods or services are*
 23 *not shipped or provided within such period a refund*
 24 *be required;*

1 (2) *where practicable, authority for a person who*
2 *orders a good or service through telemarketing to can-*
3 *cel the order within a specified period;*

4 (3) *restrictions on the hours of the day when un-*
5 *solicited telephone calls can be made to consumers;*

6 (4) *a prohibition of telemarketing generated by*
7 *computers on equipment that does not permit the in-*
8 *dividual called to terminate the telephone call; and*

9 (5) *recordkeeping requirements.*

10 (b) *PROHIBITION OF FRAUDULENT TELEMARKETING*
11 *ACTS OR PRACTICES.—The Commission also shall prescribe*
12 *rules prohibiting fraudulent telemarketing acts or practices*
13 *and shall include in such rules a definition of the term*
14 *“fraudulent telemarketing acts or practices”, which may in-*
15 *clude activities of entities or individuals that assist or fa-*
16 *cilitate fraudulent telemarketing. Credit card laundering*
17 *shall be a fraudulent telemarketing act or practice. Such*
18 *rules shall also require that, in each telemarketing call, any*
19 *person engaged in telemarketing shall promptly and clearly*
20 *disclose to the prospective purchaser that the purpose of the*
21 *call is to sell goods or services and shall make such other*
22 *disclosures as the Commission deems appropriate, including*
23 *the nature and price of the goods and services.*

24 (c) *DEADLINE; ADMINISTRATIVE PROCEDURE.—The*
25 *Commission shall prescribe the rules under subsections (a)*

1 *and (b) of this section within 180 days after the date of*
2 *enactment of this Act. Such rules shall be prescribed in ac-*
3 *cordance with section 553 of title 5, United States Code.*

4 (d) *TREATMENT OF RULE VIOLATIONS.*—Any viola-
5 *tion of any rule prescribed under subsection (a) or (b) of*
6 *this section shall be treated as a violation of a trade regula-*
7 *tion rule promulgated under section 18 of the Federal Trade*
8 *Commission Act (15 U.S.C. 57a) regarding unfair or decep-*
9 *tive acts or practices (subject to any remedy or penalty ap-*
10 *plicable to any violation thereof).*

11 (e) *EFFECT ON STATE LAW.*—The rules promulgated
12 *under this section shall not be construed as preempting*
13 *State law.*

14 *ACTIONS BY STATE ATTORNEYS GENERAL*

15 *SEC. 4. (a) AUTHORITY OF STATES.*—Whenever the at-
16 *torney general of any State has reason to believe that the*
17 *interests of the residents of that State have been or are being*
18 *threatened or adversely affected because any person has en-*
19 *gaged or is engaging in a pattern or practice of*
20 *telemarketing which violates any rule, regulation, or order*
21 *of the Commission under this Act, the State may bring a*
22 *civil action on behalf of its residents to enjoin such*
23 *telemarketing, to enforce compliance with any rule, regula-*
24 *tion, or order of the Commission under this Act, to obtain*
25 *damages on behalf of their residents, or to obtain such fur-*
26 *ther and other relief as the court may deem appropriate.*

1 (b) *COURT JURISDICTION.*—The district courts of the
2 United States, the United States courts of any territory,
3 and the District Court of the United States for the District
4 of Columbia shall have exclusive jurisdiction over all civil
5 actions brought under this section to enforce any liability
6 or duty created by any rule, regulation, or order of the Com-
7 mission under this Act, or to obtain damages or other relief
8 with respect thereto. Upon proper application, such courts
9 shall also have jurisdiction to issue writs of mandamus, or
10 orders affording like relief, commanding the defendant to
11 comply with the provisions of any rule, regulation, or order
12 of the Commission under this Act, including the require-
13 ment that the defendant take such action as is necessary
14 to remove the danger of violation of any such rule, regula-
15 tion, or order. Upon a proper showing, a permanent or tem-
16 porary injunction or restraining order shall be granted
17 without bond.

18 (c) *RIGHTS OF COMMISSION.*—The State shall serve
19 prior written notice of any such civil action upon the Com-
20 mission and provide the Commission with a copy of its
21 complaint, except in any case where such prior notice is
22 not feasible, in which case the State shall serve such notice
23 immediately upon instituting such action. The Commission
24 shall have the right (1) to intervene in the action, (2) upon

1 *so intervening, to be heard on all matters arising therein,*
 2 *and (3) to file petitions for appeal.*

3 (d) *VENUE; SERVICE OF PROCESS.*—Any civil action
 4 *brought under this section in a district court of the United*
 5 *States may be brought in the district wherein the defendant*
 6 *is found or is an inhabitant or transacts business or wher-*
 7 *ever venue is proper under section 1391 of title 28, United*
 8 *States Code, and process in such cases may be served in*
 9 *any district in which the defendant is an inhabitant or*
 10 *wherever the defendant may be found.*

11 (e) *EFFECT ON STATE POWERS OF ATTORNEYS GEN-*
 12 *ERAL.*—For purposes of bringing any civil action under
 13 *this section, nothing in this Act shall prevent the attorney*
 14 *general from exercising the powers conferred on the attorney*
 15 *general by the laws of such State to conduct investigations*
 16 *or to administer oaths or affirmations or to compel the at-*
 17 *tendance of witnesses or the production of documentary and*
 18 *other evidence.*

19 (f) *EFFECT ON ACTIONS UNDER STATE STATUTE.*—
 20 *Nothing contained in this section shall prohibit an author-*
 21 *ized State official from proceeding in State court on the*
 22 *basis of an alleged violation of any general civil or criminal*
 23 *statute of such State.*

24 (g) *CIVIL ACTION BY COMMISSION.*—Whenever the
 25 *Commission has instituted a civil action for violation of*

1 *any rule prescribed under this Act, no State may, during*
 2 *the pendency of such action instituted by the Commission,*
 3 *subsequently institute a civil action against any defendant*
 4 *named in the Commission's complaint for violation of any*
 5 *rule as alleged in the Commission's complaint.*

6 *ACTIONS BROUGHT BY PRIVATE PERSONS*

7 *SEC. 5. (a) DEFINITION.—As used in this section, the*
 8 *term “person adversely affected by telemarketing” means—*

9 *(1) any person who has incurred loss or damage*
 10 *in connection with telemarketing and who actually*
 11 *purchased goods or services through telemarketing, or*
 12 *paid or is obligated to pay for goods or services pur-*
 13 *chased through telemarketing;*

14 *(2) any financial institution that has incurred*
 15 *loss or damage in connection with telemarketing; or*

16 *(3) any member organization comprised of fi-*
 17 *nancial institution members, or any parent organiza-*
 18 *tion of such member organization, if one or more of*
 19 *the financial institution members is eligible to bring*
 20 *a civil action under this subsection.*

21 *Such term does not include a governmental entity.*

22 *(b) PRIVATE RIGHT OF ACTION.—(1) Any person ad-*
 23 *versely affected by any pattern or practice of telemarketing*
 24 *which violates any rule, regulation, or order of the Commis-*
 25 *sion under this Act may, within 3 years after discovery of*
 26 *the violation, bring a civil action against a person who has*

1 engaged or is engaging in such pattern or practice of
2 telemarketing if the amount in controversy exceeds the sum
3 or value of \$50,000 in actual damages for each person ad-
4 versely affected by such telemarketing. Such an action may
5 be brought to enjoin such telemarketing, to enforce compli-
6 ance with any rule, regulation, or order of the Commission
7 under this Act, to obtain damages, or to obtain such further
8 and other relief as the court may deem appropriate.

9 (2) The district courts of the United States, the United
10 States courts of any territory, and the District Court of the
11 United States for the District of Columbia shall have exclu-
12 sive jurisdiction over all civil actions brought under this
13 section to enforce any liability or duty created by any rule,
14 regulation, or order of the Commission under this Act, or
15 to obtain damages or other relief with respect thereto. Upon
16 proper application, such courts shall also have jurisdiction
17 to issue writs of mandamus, or orders affording like relief,
18 commanding the defendant to comply with the provisions
19 of any rule, regulation, or order of the Commission under
20 this Act, including the requirement that the defendant take
21 such action as is necessary to remove the danger of violation
22 or of any such rule, regulation, or order. Upon a proper
23 showing, a permanent or temporary injunction or restrain-
24 ing order shall be granted without bond.

1 (3) *The plaintiff shall serve prior written notice of the*
2 *action upon the Commission and provide the Commission*
3 *with a copy of its complaint, except in any case where such*
4 *prior notice is not feasible, in which case the person shall*
5 *serve such notice immediately upon instituting such action.*

6 *The Commission shall have the right (A) to intervene in*
7 *the action, (B) upon so intervening, to be heard on all mat-*
8 *ters arising therein, and (C) to file petitions for appeal.*

9 (4) *Whenever the Commission has instituted a civil ac-*
10 *tion for violation of any rule prescribed under this Act, no*
11 *person may, during the pendency of such action instituted*
12 *by the Commission, subsequently institute a civil action*
13 *against any defendant named in the Commission's com-*
14 *plaint for violation of any rule as alleged in the Commis-*
15 *sion's complaint.*

16 (5) *Any civil action brought under this section in a*
17 *district court of the United States may be brought in the*
18 *district wherein the defendant is found or is an inhabitant*
19 *or transacts business or wherever venue is proper under sec-*
20 *tion 1391 of title 28, United States Code, and process in*
21 *such cases may be served in any district in which the de-*
22 *fendant is an inhabitant or wherever the defendant may*
23 *be found.*

24 (c) *AWARD OF COSTS AND FEES.—The court, in issu-*
25 *ing any final order in any action brought under subsection*

1 *(b), may award costs of suit and reasonable fees for attor-*
 2 *neys and expert witnesses to the prevailing party.*

3 *(d) RIGHTS UNDER STATUTE OR COMMON LAW.—*
 4 *Nothing in this section shall restrict any right which any*
 5 *person may have under any statute or common law.*

6 *VENUE*

7 *SEC. 6. Any suit brought against a person, partner-*
 8 *ship, or corporation under section 13(b) of the Federal*
 9 *Trade Commission Act (15 U.S.C. 53(b)) may be brought*
 10 *where the defendant resides or transacts business, or wher-*
 11 *ever venue is proper under section 1391 of title 28, United*
 12 *States Code. In such a suit, if the court determines that*
 13 *the interests of justice require that any other person, part-*
 14 *nership, or corporation should be a party in such suit, the*
 15 *court may cause such person, partnership, or corporation*
 16 *to be summoned without regard to whether they reside or*
 17 *transact business in the district in which the suit is*
 18 *brought. In any suit under this section, process may be*
 19 *served on any person, partnership, or corporation, wherever*
 20 *they may be found.*

21 *SUBPOENA*

22 *SEC. 7. (a) PHYSICAL EVIDENCE DEFINED.—Section*
 23 *20(a) of the Federal Trade Commission Act (15 U.S.C. 57b–*
 24 *1(a)) is amended—*

25 *(1) by redesignating paragraph (7) as para-*
 26 *graph (8); and*

1 (2) by inserting immediately after paragraph (6)
2 the following new paragraph:

3 “(7) The term ‘physical evidence’ means any ob-
4 ject or device.”.

5 (b) *ISSUANCE OF DEMAND*.—Section 20(c)(1) of the
6 Federal Trade Commission Act (15 U.S.C. 57b–1(c)(1)) is
7 amended—

8 (1) by inserting “physical evidence or” imme-
9 diately after “any” the second time it appears;

10 (2) by inserting “to produce such physical evi-
11 dence for inspection,” immediately before “to
12 produce”;

13 (3) by inserting “physical evidence,” imme-
14 diately after “concerning”; and

15 (4) by inserting “evidence,” immediately before
16 “material, answers,”.

17 (c) *CONTENTS OF DEMAND*.—Section 20(c)(3)) of the
18 Federal Trade Commission Act (15 U.S.C. 57b–1(c)(3)) is
19 amended—

20 (1) by inserting “physical evidence or” imme-
21 diately before “documentary material” the first time
22 it appears;

23 (2) in subparagraph (A)—

24 (A) by inserting “physical evidence or” im-
25 mediately before “documentary”; and

1 (B) by inserting “evidence or” immediately
 2 after “permit such”;

3 (3) in subparagraph (B), by inserting “evidence
 4 or ” immediately before “material”; and

5 (4) in subparagraph (C), by inserting “evidence
 6 or” immediately before “material”.

7 (d) *PRODUCTION OF EVIDENCE IN RESPONSE TO DE-*
 8 *MAND.—Section 20(c)(10) of the Federal Trade Commission*
 9 *Act (15 U.S.C. 57b–1(c)(10)) is amended by inserting*
 10 *“physical evidence or” immediately before “documentary*
 11 *material” each place it appears.*

12 *FALSE ADVERTISEMENTS CONCERNING SERVICES*

13 *SEC. 8. Section 12(a) of the Federal Trade Commis-*
 14 *sion Act (15 U.S.C. 52(a)) is amended by inserting “serv-*
 15 *ices,” immediately after “devices,” each place it appears.*

16 *CLEARINGHOUSE*

17 *SEC. 9. The Commission shall establish a clearinghouse*
 18 *for inquiries made to Federal agencies concerning*
 19 *telemarketing. The clearinghouse will provide information*
 20 *(other than information which may not be disclosed under*
 21 *section 552(b) of title 5, United States Code, or under regu-*
 22 *lations prescribed by the Commission to implement section*
 23 *552(b) of title 5, United States Code) to anyone making*
 24 *inquiries respecting persons engaged in telemarketing or di-*
 25 *rect such inquiries to the appropriate Federal or State*
 26 *agency.*

FINANCIAL DATA

1
2 *SEC. 10. Section 1109(a)(3) of the Right to Financial*
3 *Privacy Act of 1978 (12 U.S.C. 3409(a)(3)) is amended—*

4 *(1) by redesignating subparagraph (E) as sub-*
5 *paragraph (F);*

6 *(2) by striking “or” at the end of subparagraph*
7 *(D); and*

8 *(3) by inserting immediately after subparagraph*
9 *(D) the following new subparagraph:*

10 *“(E) dissipation, removal, or destruction of*
11 *assets that are subject to forfeiture, seizure, re-*
12 *dress, or restitution under any law of the United*
13 *States by reason of having been obtained in vio-*
14 *lation of law; or”.*

CRIMINAL CONTEMPT AUTHORITY

15
16 *SEC. 11. Section 16(a)(1) of the Federal Trade Com-*
17 *mission Act (15 U.S.C. 56(a)(1)) is amended—*

18 *(1) in subparagraph (A) by striking “civil” the*
19 *first place it appears and inserting in lieu thereof*
20 *“Federal court”; and*

21 *(2) by adding at the end the following: “The*
22 *Commission may bring a criminal contempt action*
23 *for violations of orders obtained in cases brought*
24 *under section 13(b) of this Act in the same manner*
25 *as civil penalty and other Federal court actions to*
26 *which this subsection applies. Such cases may be ini-*

1 *tiated by the Commission on its own complaint, or*
2 *pursuant to its acceptance of an appointment by a*
3 *court to assist it in enforcing such orders pursu-*
4 *ant to Rule 42(b) of the Federal Rules of Criminal*
5 *Procedure.”.*

6 *ADMINISTRATION AND APPLICABILITY OF ACT*

7 *SEC. 12. (a) ENFORCEMENT.—Except as otherwise*
8 *provided in sections 4 and 5 of this Act, this Act shall be*
9 *enforced by the Commission under the Federal Trade Com-*
10 *mission Act (15 U.S.C. 41 et seq.).*

11 *(b) APPLICABILITY OF FTCA.—The Commission shall*
12 *prevent any person from violating a rule, regulation, or*
13 *order of the Commission under this Act in the same man-*
14 *ner, by the same means, and with the same jurisdiction,*
15 *powers, and duties as though all applicable terms and pro-*
16 *visions of the Federal Trade Commission Act (15 U.S.C.*
17 *41 et seq.) were incorporated into and made a part of this*
18 *Act. Any person who violates such a rule, regulation, or*
19 *order shall be subject to the penalties and entitled to the*
20 *privileges and immunities provided in the Federal Trade*
21 *Commission Act in the same manner, by the same means,*
22 *and with the same jurisdiction, powers, and duties as*
23 *though all applicable terms and provisions of the Federal*
24 *Trade Commission Act were incorporated into and made*
25 *a part of this Act.*

1 (c) *EXEMPTION.*—(1) *No provision of this Act shall*
2 *apply to any person exempt from the jurisdiction of the*
3 *Commission under section 5(a)(2) of the Federal Trade*
4 *Commission Act (15 U.S.C. 45(a)(2)), and nothing in this*
5 *Act shall be construed to vest the Commission, or the attor-*
6 *ney general of any State or any person, with jurisdiction*
7 *or authority over any person not otherwise subject to the*
8 *jurisdiction or authority of the Commission.*

9 (2)(A) *No provision of this Act shall apply—*

10 (i) *to a broker, dealer, municipal securities deal-*
11 *er, government securities broker, government securities*
12 *dealer, or investment company in connection with the*
13 *offer, sale, or purchase of any security, or to an issuer*
14 *in connection with the offer, sale, or purchase of any*
15 *security which that issuer has issued, or to any in-*
16 *vestment adviser providing investment advice relating*
17 *to any security; or*

18 (ii) *to the solicitation, acceptance, confirmation,*
19 *or execution of orders for the entry into, purchase of,*
20 *or sale of any contract, account, agreement, or trans-*
21 *action subject to the exclusive jurisdiction of the Com-*
22 *modity Futures Trading Commission under the Com-*
23 *modity Exchange Act (7 U.S.C. 1 et seq.) by a person*
24 *registered under the Commodity Exchange Act in*
25 *order to engage in such activity, including as a fu-*

1 *tures commission merchant, introducing broker, com-*
 2 *modity trading advisor, commodity pool operator, le-*
 3 *verage transaction merchant, floor broker, or floor*
 4 *trader, or as a person associated with any such*
 5 *person.*

6 *(B) For purposes of subparagraph (A)(i)—*

7 *(1) the terms “broker”, “dealer”, “municipal se-*
 8 *curities dealer”, “government securities broker”, and*
 9 *“government securities dealer” have the meanings*
 10 *given them in section 3(a) (4), (5), (30), (43), and*
 11 *(44), respectively, of the Securities Exchange Act of*
 12 *1934 (15 U.S.C. 78c(a) (4), (5), (30), (43), and (44));*

13 *(2) the term “investment adviser” has the mean-*
 14 *ing given it in section 202(a)(11) of the Investment*
 15 *Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));*

16 *(3) the term “investment company” has the*
 17 *meaning given it in section 3(a) of the Investment*
 18 *Company Act of 1940 (15 U.S.C. 80a–3(a));*

19 *(4) the term “issuer” has the meaning given it*
 20 *in section 2(4) of the Securities Act of 1933 (15*
 21 *U.S.C. 77b(4)); and*

22 *(5) the term “security” has the meaning given to*
 23 *it in section 2(1) of the Securities Act of 1933 (15*
 24 *U.S.C. 77b(1)), section 3(a)(10) of the Securities Ex-*
 25 *change Act of 1934 (15 U.S.C. 78c(a)(10)), and sec-*

1 *tion 2(a)(36) of the Investment Company Act of 1940*
 2 *(15 U.S.C. 80a-2(a)(36)).*

3 *LIFE CARE HOME STUDY*

4 *SEC. 13. (a) STUDY.—The Federal Trade Commission*
 5 *shall conduct a study of unfair or deceptive acts or practices*
 6 *in the life care home industry, including acts or practices*
 7 *engaged in by life care homes. Within 24 months after the*
 8 *date of enactment of this Act, the Commission shall report*
 9 *the findings and conclusions of the study to Congress. The*
 10 *Commission shall indicate in its report whether it intends*
 11 *to initiate a trade regulation rulemaking under section 18*
 12 *of the Federal Trade Commission Act (15 U.S.C. 57a) re-*
 13 *specting unfair or deceptive acts or practices in the life care*
 14 *home industry and the reasons for such determination.*

15 *(b) DEFINITIONS.—For purposes of subsection (a), the*
 16 *term—*

17 *(1) “life care home” includes the facility or fa-*
 18 *cilities occupied, or planned to be occupied, by resi-*
 19 *dents or prospective residents where a provider under-*
 20 *takes to provide living accommodations and services*
 21 *pursuant to a life care contract, regardless of whether*
 22 *such facilities are operated on a profit or nonprofit*
 23 *basis; and*

24 *(2) “life care contract” includes a contract be-*
 25 *tween a resident and a provider to provide the resi-*
 26 *dent, for the duration of such resident’s life, living ac-*

1 *commodations and related services in a life care*
2 *home, including nursing care services, medical serv-*
3 *ices, and other health-related services, which is condi-*
4 *tioned upon the transfer of an entrance fee to the pro-*
5 *vider and which may be further conditioned upon the*
6 *payment of periodic service fees.*

7 *SUNSET*

8 *SEC. 14. The provisions of sections 3, 4, and 5 shall*
9 *cease to have force and effect on and after the date that*
10 *is five years following the date of enactment of this Act.*

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